

**WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION**

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

Form #3

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: Department of Health and Human Resources TITLE NUMBER: 64

CITE AUTHORITY: WV Code §§16-1-4 and -9a

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 25

TITLE OF RULE BEING PROPOSED: Certification of Backflow Prevention Assembly Testers

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

Shanaray Phares 07/22/03
Authorized Signature

Certification of Backflow Prevention Assembly Testers, 64CSR25

Statement of Circumstances

The current "Cross-Connection Control and Backflow Prevention" rule, Title 64 Series 15, requires that inspections of backflow prevention devices which prevent contamination of potable water from sources within the distribution system, be performed by a person certified by the Bureau for Public Health. Until now there has never been a certification program for Backflow Prevention Assembly Testers. This rule that implements a certification program with the guidelines for testers to become certified, will ensure that there are testers throughout the state to check that the Backflow Prevention Assemblies are installed and functioning properly, reducing the risk of contamination of public water systems.

Certification of Backflow Prevention Assembly Testers

64CSR25

Brief Summary of the Proposed Rule

This rule governs the examination and certification of backflow prevention assembly testers, setting up the program guidelines of certification for the testers. This will reduce the risk of contamination in public water systems by having certified testers, as required in the current Bureau of Public Health rules, "Cross-Connection Control and Backflow Prevention", 64CSR15.

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Certification of Backflow Prevention Assembly Testers, Title 64 Series 25

Type of Rule: **Legislative** **Interpretive** **Procedural**

Agency: Bureau for Public Health, DHHR
 Office of Environmental Health Services -Victor Wilford

Address: 815 Quarrier Street, Suite 418
 Charleston, WV 25301

1. Effect of the Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$0	\$285,6188	\$218,218
Personal Services			0	187,014	187,014
Current Expense			0	42,604	26,704
Repairs & Alterations			0	0	0
Equipment			0	18,000	0
Other (ETC) - Contract			0	38,000	4,500
Revenue			0	0	0

2. Explanation of above estimates.

First Year:

Personal Services

1.00 FTE for HHR Program Manager (training and exam)	38,900	
2.00 FTE Engineer I (1 for training and 1 for sanitary surveys)	80,000	
1.00 FTE Office Assistant II (cert. filing, typing, renewals)	18,000	
Administrative Fee @ 240/FTE	960	
FICA, Retirement and Workers Comp (21.88%)	29,954	
Health Insurance @ 4800/FTE	<u>19,200</u>	
Total	187,014	\$187,014

Current Expense

In State Travel @ \$165/night, 50wks, 2da/wk (tech asst)	16,500	
In State Travel @ \$165/night, 12wks, 5da/wk (trainer)	9,900	
Out of State Travel 2 one week travel (out of state training)	6,000	
Office Supplies 800/FTE	3,200	
Telephone 400/FTE	1,600	
Rent 100 sq ft/FTE @ \$13.51/sq ft	<u>5,404</u>	
Current Expense Total	42,604	\$ 42,604

Issuance of Certificates 1st Year:

Equipment

Computer Equipment 4@\$2500	10,000	
Office Furniture 4@\$2,000	<u>8,000</u>	
	18,000	\$18,000

Contract

Contract to administer 12 one week classes/first yr.	\$38,000	<u>\$ 38,000</u>
Total First Year		\$285,618

Subsequent years of new certifications and renewals:

Personal Services

1.00 FTE for HHR Program Manager (training and exam)	9,000	
2.00 FTE Engineer I (1 for training and 1 for sanitary surveys)	80,000	
1.00 FTE Office Assistant II (cert. filing, typing, renewals)	18,000	
Administrative Fee @ 240/FTE	960	
FICA, Retirement and Workers Comp (21.88%)	29,954	
Health Insurance @ 4800/FTE	<u>19,200</u>	
	187,014	\$187,014

Current Expense

In State Travel \$165/night, 50wks, 2da/wk (tech. asst.)	16,500	
Office Supplies 800/FTE	3,200	
Telephone 400/FTE	1,600	
Rent 100 sq ft/FTE @ \$13.51/sq ft	<u>5,404</u>	
	26,704	\$26,704

Contract

Manuals	\$1,000/year	
Test Benches/Gauges	\$3,000/year	
Overhead for contractor	<u>\$ 500/year</u>	
	\$4,500	<u>\$4,500</u>
Total Subsequent Years		\$218,218

3. Objectives of this rule:

To implement the current requirement, under Title 64 Series 15, which requires backflow prevention assemblies to be inspected by a person certified by the Agency. The purpose of the backflow prevention assembly is to prevent undesirable contaminants from entering the public water system at locations within the distribution system. Routine inspections will insure that the assemblies are continuing to function, and the certification requirement will insure that the person inspecting is knowledgeable in determining the status of the assemblies.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

Direct increased cost to the state is \$285,618 in the first year with ongoing incremental costs to the state of approximately \$218,218. These costs reflect the anticipated implementation of this new program in the first year, and the anticipated reduction, after the first year. The first year the training sessions will be contracted to a third party, with some of these costs being offset by passing the costs on to the students and also from anticipated grants.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens.

Depending on the utility, the cost of overseeing the inspection program will vary, dependent on the number of Backflow Prevention Assemblies(BPA's) that the utility has in their system. The number of persons needed will vary from none (associated with no BPA's) to a maximum of 2.0 FTE's. Generally, the larger the population a utility serves, the larger number of BPA's the system will have. Any costs to the utility will be passed on to the public at large through nominal increases to the utility bill.

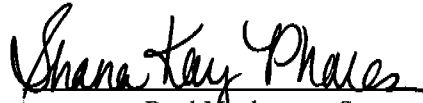
Those industries and facilities that require the installation of BPA's will bear the cost of having an annual inspection of the assemblies performed. The cost will vary, dependent on free market conditions, number of inspections, type of assembly, etc. It is also anticipated that a number of existing BPA's will need to be repaired or replaced, as many have never undergone testing.

C. Economic Impact on Citizens/Public at Large.

The utilities that will be affected by this regulation may have justification in raising the rates for water service, in order to pass on the administrative costs of overseeing the assembly inspection program. The cost to each individual customer should be nominal.

Date: July 22, 2003

Signature of Agency Head or Authorized Representative:

_____

Paul Musbaum, Secretary
Department of Health and Human Resources

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period, Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: July 22, 2003

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency name, Address & Phone No.) Martha Barnitt

Department of Health and Human Resources

State Capitol Complex, Building 3, Room 206; Charleston, WV 25305

Telephone: (304) 558-5598

LEGISLATIVE RULE TITLE: Certification of Backflow Prevention Assembly

Testers

1. Authorizing statute(s) citation: WV Code §§ 16-1-4 and -9a.

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

June 18, 2003

b. What other notice, including advertising, did you give of the hearing?

Notice of the proposed rule was sent to newspapers, county health

departments, and industry associations, including the WV Rural Water

Association and the American Water Works Association.

c. Date of Public Hearing(s) or Public Comment Period ended:

July 18, 2003

- d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached _____ No comments received X

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing (be exact):

July 22, 2003

- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all written correspondence regarding this rule (please type):

Martha Barnitt

Policy Development & Regulatory Affairs - - DHHR

Building 3 - Room 206

Charleston, West Virginia 25305 Tel: 558-5598 Fax: 558-7075

- g. IF DIFFERENT FROM ITEM 'f', please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule (please type):

Vic Wilford, Director - Environmental Engineering Division

Office of Environmental Health Services - DHHR

815 Quarrier Street, Suite 418

Charleston, West Virginia 25305 Tel: 558-2981

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing or comment period:

N/A

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefore?

N/A

d. Attach findings and determinations and reasons:

Attached N/A

**TITLE 64
LEGISLATIVE RULES
BUREAU FOR PUBLIC HEALTH**

FILED

**SERIES 25
CERTIFICATION OF BACKFLOW PREVENTION ASSEMBLY TESTERS**

2003 JUL 22 P 4:13

§64-25-1. General.

OFFICE WEST VIRGINIA
SECRETARY OF STATE

1.1. Scope. - This legislative rule governs the examination and certification of backflow prevention assembly testers. This rule should be read in conjunction with W. Va. Code §§16-1-9, -9a and -18. The W. Va. Code is available in public libraries and on the Legislature's web page: <http://www.legis.state.wv.us/>.

1.2. Authority.- W. Va. Code §§16-1-4 and -9a.

1.3. Filing Date. -

1.4. Effective Date. -

§64-25-2. Application and Enforcement.

2.1. Application.- This rule applies to certified backflow prevention assembly testers as defined in Section 3 of this rule.

2.2. Enforcement. - This rule is enforced by the Commissioner of the Bureau for Public Health, or his or her designee.

§64-25-3. Definitions.

3.1. Applicant. - An individual who has applied for certification as a backflow prevention assembly tester.

3.2. Approved. - Authorized by the Commissioner.

3.3. Backflow Prevention Assembly Tester Certification. - a written document issued by the Commissioner certifying an individual as a tester for backflow prevention assemblies or methods.

3.4. Certified Backflow Prevention Assembly Tester. - An individual who meets all of the requirements of this rule to be certified to inspect and test backflow prevention assemblies or methods.

3.5. Commissioner. - The Commissioner of the West Virginia Bureau of Public Health or his or her designee.

§64-25-4. Qualifications for Certification.

4.1. Applicants for certification as a backflow prevention assembly tester shall:

4.1.a. Be a minimum of eighteen (18) years of age;

4.1.b. Have either a high school diploma or a general education diploma (GED);

4.1.c. Complete and pass all parts of an approved forty (40) hour course of instruction in theory, design, performance, testing and maintenance of backflow prevention assemblies; or

4.1.d. Meet requirements of this rule for re-certification, reinstatement or recognition of certification by another jurisdiction.

§64-25-5. Certification Application.

5.1. Application.

5.1.a. An applicant for certification as a backflow prevention assembly tester shall submit an application form available from the Bureau for Public Health, proof of education and proof of completing an approved course of instruction as identified in Section 4 of this rule.

5.1.b. Any applicant who commits fraud or misrepresentation on the application will be permanently disqualified from consideration.

§64-25-6. Certification Examinations.

6.1. The Commissioner shall schedule the two-part examination for those applicants who meet the requirements in Section 4 of this rule and shall notify the applicants at least fourteen (14) days before the scheduled examination date.

6.2. The examination shall consist of a performance examination and a closed book written examination. Exceptions to the written part are:

6.2.a. An applicant may make a written request to the Commissioner at least thirty (30) days before a scheduled examination date for an oral examination to be given instead of the written examination. Only after the applicant receives written approval from the Commissioner may an oral examination be given. An oral examination shall not affect the performance examination requirement; and

6.2.b. All examinations shall be administered in English.

6.3. Examination grade.

6.3.a. An applicant's certification status shall be determined by the examination grade.

6.3.b. To pass the examination, an applicant is required to make a minimum grade of seventy percent (70%) on the written examination, and must demonstrate competence to the Commissioner on the performance examination.

6.3.c. An applicant who does not receive a passing grade on the written or successfully complete the performance examination shall wait a minimum of sixty (60) days before applying for reexamination.

6.3.d. An applicant who fails an examination three (3) times shall wait a minimum of one (1) year before reexamination.

6.4. Ineligible Applicants:

6.4.a. The Commissioner shall declare the examination scores of any applicant who corrupts or attempts to corrupt the examination process invalid and shall declare the applicant ineligible for certification upon discovery of the applicant's conduct.

6.4.b. Conduct of an applicant resulting in invalidation of the applicant's examination includes:

6.4.b.1. Taking any action that violates the security of examination materials, such as removal of any examination materials from the examination room or bringing into the examination room any examination aid;

6.4.b.2. Communicating with any other examinee;

6.4.b.3. Copying answers from another examinee or permitting one's answers to be copied by another examinee; or

6.4.b.4. Falsifying or misrepresenting information for admission to the examination or having someone else take the examination on one's behalf.

§64-25-7. Certification Expiration, Re-certification, Revocation and Reinstatement.

7.1. Expiration. Backflow prevention assembly tester certifications expire three (3) years after the date of issue.

7.2. For re-certification:

7.2.a. Backflow prevention assembly testers shall submit a written application (Form EW-75, available from the Bureau for Public Health) to the Commissioner at least thirty (30) days before, and no more than ninety (90) days prior to, expiration of certification. The application shall include documentation, satisfactory to the Commissioner, that the applicant has a minimum of ninety (90) hours experience or has attended at least one approved continuing education course for backflow prevention assembly testers during the past three (3) years.

7.2.b. Testers who fail to submit an application for re-certification or who submit an application that remains incomplete thirty (30) days before the expiration of certification shall retake and pass both the written and performance examinations in accordance with Section 6 of this rule before the applicant will be re-certified.

7.3. Revocation or suspension. The Commissioner may revoke or suspend the certificate of any person who fraudulently obtains certification, assists another in fraudulently obtaining or attempting to obtain certification, or is found to have committed neglect, incompetency or misconduct in the performance of his or her duties as a backflow prevention assembly tester, including non-compliance with this rule. Any person whose certificate is suspended must cease any inspection and testing of backflow prevention assemblies until their certification is reinstated.

7.4. Reinstatement. The Commissioner may reinstate any person whose certification has been revoked upon being presented with satisfactory evidence that all deficiencies leading to the revocation have been corrected.

§64-25-8. Reciprocity.

8.1. The Commissioner may grant West Virginia certification to a backflow prevention assembly tester certified by another jurisdiction, if written proof is presented to the Commissioner that:

8.1.a. The applicant has successfully passed a certification examination at least equivalent to that required under this rule;

8.1.b. The applicant has successfully completed a course of instruction at least equivalent to that required under this rule; and

8.1.c. The applicant meets the educational and age requirements of this rule.

§64-25-9. Compliance and Penalties.

9.1. A person subject to the provisions of this rule shall comply fully with them and shall not direct or assist another person to violate this rule.

9.2. A person who violates any provision of this rule is subject to the criminal penalties of West Virginia Code §16-1-18.

§64-25-10. Administrative Due Process.

10.1. Those persons adversely affected by the enforcement of this rule may request a contested case hearing in accordance with the Division of Health rule, "Rules and Procedures for Contested Case Hearing and Declaratory Rulings," 64 CSR1.